IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.MC.No. 393 of 2007()

CRA.622/2006 of SESSIONS COURT, THALASSERY
MC.67/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TALIPARAMBA

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PETITIONER:

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1. AZHEEKKODANKATH ABOOBACKER,
S/O. MOIDEEN, 41 YEARS,
THALIPARAMBA AMSOM, DESOM,
THALIPARAMBA TALUK,
KANNUR.

2. CHEMBON MUSTHAFA,
S/O. ABDUL RAHIMAN, 51 YEARS,
THALIPARAMBA AMSOM DESOM,
THALIPARAMBA TALUK,
KANUR.

BY ADV. SRI.PROMY KAPRAKKATT
SRI.K.N.ABHILASH

RESPONDENTS:

THE STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. S.U.NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 393 OF 2007

Dated this the 15th day of February, 2007

ORDER

The petitioners are the sureties of an accused who faces indictment for the offences punishable, inter alia, under Sec.307 read with Sec.149 of the IPC. The accused person is not available for appearance before the court below and, in these circumstances, the learned Magistrate had initiated proceedings under Sec.446 of the Cr.P.C. against the petitioners. The bond was for an amount of Rs.15,000/-. The entire bond amount has been directed to be paid as penalty. The petitioners have preferred an appeal before the learned Sessions Judge. The learned Sessions Judge admitted the appeal and directed suspension of the impugned order under Sec.446 of the Cr.P.C. on condition that the petitioners deposit 50% of the penalty amount before the lower court by 19/2/2007.

2. The petitioners have come to this Court complaining that the condition imposed is too onerous. The petitioners are poor and indigent. They are unable to raise the amount.

Virtually, the direction would deprive the petitioners of their right of appeal under Sec.449 of the Cr.P.C. In these circumstances, a lenient view may be taken and the direction for deposit may be set aside, it is prayed.

3. Admittedly, the accused has not been produced so far and in these circumstances, I am of opinion that the learned Sessions Judge did not commit any error in imposing a condition for suspension of execution of the order. However, accepting the submissions of the learned counsel for the petitioners, I am satisfied that the petitioners can be granted further time to make the payment of the amount as directed in the impugned order. In case, the petitioners are unable to pay the amount, they can certainly request the learned Sessions Judge for an expeditious out of turn disposal of the appeal filed by them under Sec.449 of the Cr.P.C.

4. In the result, this Crl.M.C. is allowed in part. The petitioners are granted time till 13/4/2007 to pay the balance amount on condition that they pay 25% of the penalty amount within a period of 15 days from this date. If the petitioners are unable to raise the balance amount, they can within 15 days file an application before the learned Sessions Judge for an out of

turn expeditious disposal of the appeal itself and thereupon the learned Sessions Judge must ensure that the appeal is disposed of by 13/4/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge